

STATE OF VERMONT
DEPARTMENT OF EDUCATION

In Re:)
) Special Education Due Process
) Docket #06-17
)

DECISION

This case was initiated by the parents filing for due process on behalf of the student on May 26, 2006 against the Mount Anthony Union High School District (district). In their complaint, parents alleged that the district is going back on their agreements incorporated in the Settlement of Special Education Due Process Case # 05-19 and the district is going back on their recent promise to send the student to a different school.

The parents have appeared *pro se* and the district has been represented by Robert Fletcher, Esq., of Stitzel, Page & Fletcher. Based on telephone calls with the parents and Fletcher, a prehearing telephone conference was scheduled for June 12, 2006.

Subsequent to the scheduling of the prehearing telephone conference, the district filed District's Response to Complaint and Motion for Judgment on the Pleadings dated June 5, 2006 and received June 6, 2006. In terms of the due process complaint allegations about Due Process # 05-19, the district based its motion on the Settlement Agreement, Release & Covenant Not to Sue incorporated into an Order on December 21, 2005. In terms of the allegations about rescinding a promise to send the student to another school, the district relied upon Section 1415(b)(7)(A)(i)(III), and supporting federal and state regulations, namely section 300.507(c)(2)(iv) of the federal regulations and VDOE Rule 2365.1.6(f)(3).¹

The parent filed information regarding the alleged rescission of a promise to send the student to another school in materials dated June 6 and 8, 2006. In particular, parents believe a promise was made to send the student to the Kildonan School for the 2006-2007 school year.

Pursuant to Section 1415(c)(2)(D), the hearing officer has five days from receipt of the motion to rule on the sufficiency of the due process complaint. Allowing that the fifth day fell on Sunday, the date for a decision is June 12, 2006.

During the prehearing telephone conference of June 12, 2006, the parties were informed that the district's motion would be granted. The father appeared *pro se* and the district was represented by Robert Fletcher. The parents do not agree with the decision and are presently in the process of finding counsel. The parents believe that the procedural

¹ In addition, the district argues that the complaint should be dismissed because the complaint is not signed. I am not reaching this issue as other grounds exist to dismiss the complaint.

requirements are too burdensome for parents filing for due process without the benefit of counsel or legal advice.

Allegations arising under DP #05-19

The parties settled an earlier due process complaint through a signed Settlement Agreement, Release, and Covenant Not to Sue which was incorporated into an Order on December 21, 2005. Both parties were represented by attorneys. The agreement was meant to be a full settlement of all underlying claims.

Paragraph 8 of said agreement constitutes a waiver and release by the parents of any claim they may have against the district including claims arising under due process DP#05-19 including claims through calendar year 2006.

Paragraph 9 of said agreement is a covenant not to sue in which the parents agree not to bring any legal action including due process complaints regarding actions or omissions through the date of the agreement or which relate to the student's education or enrollment at Pine Ridge during 2006.

Paragraph 10 provides the parties with a mechanism to enforce the agreement.

Paragraph 14 provides that the parties agree the district's duties under the IDEIA for the 2005-2006 school year are fulfilled by the terms of the agreement.

Paragraph 6(b) provides that the parents will participate in the planning and development of the student's IEP for the 2006-2007 school year.

As part of this agreement, arrangements were made for the student to attend Pine Ridge School beginning January, 2006 through December 31, 2006. Moreover, the parties agreed that if the student stopped attending Pine Ridge, the Student would complete the remainder of the school year at Mount Anthony Union High School (MAUHS). Paragraph 6(a).

During February of 2006, the student's enrollment at Pine Ridge was terminated and the student returned to MAUHS for the remainder of the 2005-2006 school year.

To the extent that the parents' present due process complaint is an attempt to relitigate the underlying claims of DP# 05-19 or to modify or amend the terms of the Settlement Agreement, Release, and Covenant Not to Sue, those sections of their complaint can not stand and are dismissed.

The parents have raised the issue that the resolution of the earlier case was meant to incorporate a 2.5 year period. The decision on the district's motion is based upon the plain language of the Settlement Agreement whose terms were limited in duration including placement of the student at Pine Ridge for the 2006 calendar year.

Allegations of rescission of promise to send student to other school

The IDEIA lays out the requirements for a party who wishes to file a due process complaint. In particular, the IDEIA requires the party to include the following information in a complaint:

a description of the nature of the problem of the child relating to such proposed initiation of change, including facts relating to such problem.
Section 1415(b)(7)(A)(i)(III).

This requirement is echoed in the Vermont Department of Education (VDOE) regulations.

If the party requesting a hearing is a parent, the request shall include a notice...which shall contain the following information:

- (1) The name and address of the child;
 - (2) The name of the school the child is attending;
 - (3) **A description of the nature of the problem complained of relating to the school district's identification, evaluation, educational placement, or services provided or not provided to the child and facts relating to the problems;** and
 - (4) The proposed resolution to the extent known and available to the parents.
- VDOE 2365.1.6(f). (emphasis added)

In the due process complaint, the parents alleged that the district agreed to send the student to another school, but rescinded their promise. No facts were given. The parents did not explain what school the student would be sent to, why a decision was made to send the student to a different school, why the district had changed their mind, when these decisions were made, etc.

The reason for spelling out these facts is to give enough information to determine whether there is a valid complaint and to give the answering party (here, the district) enough information to respond to the complaint. The complaint, as written, is not sufficient.

After the district filed its motion, the parents sent further information. The parents believe the school district made a promise during March, 2006 to send the student to Kildonan School. The parents point to an e-mail from Brenda MacDonald, the student's case manager, they received dated March 15, 2006 which ends "...we can decide later in the year if we want Kildonan for next year." The implication of the e-mail is that Kildonan is an option.

At this point, the student's IEP is being finalized for the 2006-2007 school year. The parents are in the process of obtaining legal representation and should be able to have a lawyer set out their options on how to deal with the proposed IEP. The present complaint is premature. With advice from counsel, parents can determine if there are grounds to file due process based on the decisions proposed for the 2006-2007 school year.

Order

Based on the foregoing, the district's Motion is granted and the parents' due process complaint is dismissed.

Dated this 12th day of June, 2006 at Burlington, Vermont.

Lila Shapero
Hearing Officer

Appeal Rights

Parties have a right to appeal this decision by filing a civil action in a federal district court or a state court of competent jurisdiction pursuant to 20 U.S.C. §1451(e) and 34 C.F.R. §300.512, which should be commenced within 90 days of the date of this decision.